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FILED

DISTRICT COURT OF GUAM

JAN 07 2005

MARY L.M. MORAN
CLERK OF COURT

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IN THE DISTRICT COURT OF GUAM

TERRITORY OF GUAM

LOURDES P. AGUON-SCHULTE,) CIVIL CASE NO. 04-00045

Plaintiff,)

vs.)

THE GUAM ELECTION COMMISSION, *et*)
al.,)

Defendants.)

JAY MERRILL, on his own behalf and on) CIVIL CASE NO. 04-00046

behalf of all other similarly situated voters)
desirous of casting a vote in favor of)
Proposal A at a fair and legal election,)

Plaintiffs,)

vs.)

**MUTUAL STATEMENT RE:
DISAGREEMENT ON SCHEDULING
ORDER [LR 16.2(B)]**

THE GUAM ELECTION COMMISSION;)
GERALD A. TAITANO, in his capacity as)
the Executive Director of THE GUAM)
ELECTION COMMISSION, I MINA')
BENTE SIETE NA LIHESLATURAN)
GUAHAN (The 27th Guam Legislature);)
FELIX P. CAMACHO, in his official)
capacity as the GOVERNOR OF GUAM.)

Defendants.)

The parties have met and conferred but have been unable to agree on a proposed scheduling order despite good faith efforts to do so. Plaintiffs' proposed scheduling order is attached hereto. Defendants have separately filed their proposed scheduling order.

Respectfully submitted this 7th day of January 2005.

DOOLEY ROBERTS & FOWLER LLP

By:



THOMAS L. ROBERTS

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I, **THOMAS L. ROBERTS**, hereby declare that on January 7, 2005, I caused a copy of the Mutual Statement Re: Disagreement On Scheduling Order [LR 16.2 (B)] to be served upon the following:

Cesar C. Cabot, Esq.
2nd Floor, BankPacific Building
825 South Marine Corps Drive
Tamuning, Guam 96913

Shannon J. Taitano, Esq.
Office of the Governor
Post Office Box 2674
Hagatna, Guam 96932

Calvo & Clark
655 South Marine Corps Drive
Tamuning, Guam 96913

Office of the Attorney General
Suite 2-200E, Guam Judicial Center
120 West O'Brien Drive
Hagatna, Guam 96910

Dated this 7th day of January 2005.



THOMAS L. ROBERTS

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GUAHAN (The 27th Guam Legislature);)
FELIX P. CAMACHO, in his official)
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Defendants.)

(PROPOSED) SCHEDULING ORDER

Pursuant to Rules 16 and 26(f) of the Federal Rules of Civil Procedure, and District Court
Local Rule 16.1, the parties submit the following proposed Scheduling Order:

1. Nature of the Cases.

These consolidated lawsuits seek a judgment declaring the results of the November 2, 2004 General Election on Proposal A illegal and not binding and an order compelling a special election.

2. Posture of the Cases.

These cases were originally filed in the Superior Court of Guam. On October 26, 2004, the Attorney General's Office filed notices of removal from the Superior Court to the District Court.

On October 27, 2004, Plaintiffs and Defendants, represented by the Attorney General's Office, filed a stipulation for the entry of declaratory and injunctive relief, under which the November 2, 2004 general election on Proposal A was to be adjudged invalid, and under which the election on Proposal A was to be enjoined. The court declined to sign the stipulation on October 29, 2004 in the course of denying Plaintiffs' request for pre-election injunctive relief.

On October 28, 2004, the Superior Court determined that by reason of the filing of the Attorney General's notices of removal, it lacked jurisdiction to hear the cases. That same day, the Election Commission and the Executive Director of the Election Commission filed a motion to dismiss the Aguon-Schulte case in this court. Plaintiffs filed a provisional opposition to this motion on December 10, 2004. No hearing on the motion to dismiss been scheduled by the court.

On October 29, 2004, the Attorney General's Office filed a motion to strike the appearance filed by private counsel on behalf of the Legislature and the Governor. On December 28, 2004, the Attorney General's Office filed a motion to strike the appearance filed by private counsel on behalf of the Election Commission and the Executive director of the Election commission. No hearings on

these motions to strike have been set.

The general election was held on November 2, 2004.

On November 22, 2004, the Legislature filed motions to remand both the Merrill case and the Aguon-Schulte case to the Superior Court. In the morning and early afternoon of November 24, 2004, Plaintiff Jay Merrill filed and served his opposition to the Legislature's motion to remand. The Governor, the Election Commission and the Executive Director of the Election Commission, through Calvo & Clark LLP and Cesar Cabot, Esq., filed joinders in the Legislature's motion to remand on December 6, 2004 and December 8, 2004. The Attorney General's opposition to the motion to remand was filed on December 6, 2004. The opposition to the motion to remand is based on the Attorney General's contention that his office properly represents the defendants rather than their privately-retained counsel and that the removal of the cases to this court was proper. Lou Aguon-Schulte's provisional opposition to the motion to remand in her case was filed on Thursday, December 23, 2004. No hearing on the motion for summary judgment has been scheduled.

On November 24, 2004, at the hour of 4:23 p.m., Plaintiffs received the Court's November 23, 2004 Order consolidating the two removed cases.

Plaintiffs dismissed the Legislature without prejudice on December 6, 2004.

On November 23, 2004, Plaintiff Jay Merrill filed a motion for summary judgment along with a request for oral argument. Defendants' oppositions to the motion for summary judgment were filed on December 7, 2004. Plaintiff Lou Aguon-Schulte's provisional joinder in Jay Merrill's motion for summary judgment was filed on Thursday, December 23, 2004. The Attorney General's Office filed a non-opposition to that part of the motion for summary judgment requesting declaratory

relief on December 13, 2004. No hearing on the motions for summary judgment has been scheduled.

On November 18, 2004, Plaintiffs took the deposition of the Executive Director of the Election Commission, but no other discovery has been conducted.

The parties are scheduled to appear before this court on January 24, 2004 at the hour of 10:00 a.m. for a scheduling conference.

3. **The Parties' Joint Proposed Scheduling Plan.**

There are three (3) pending motions: (1) the motion to dismiss the Lou Aguon-Schulte case filed by the Election Commission and the Executive Director of the Election Commission's privately-retained attorney, (2) the motion to remand both cases filed by all the defendants through their privately retained attorneys, and (3) Plaintiffs' motion for summary judgment in both cases. No hearing date(s) have been set by the court on any of these motions. If the court grants any one of the pending motions, it will dramatically alter the posture of the case. For example, an order granting Plaintiffs' motion for summary judgment would obviate the need for any scheduling order at all. Similarly, an order granting the motions to remand would send the cases back to Superior Court, which would also obviate the need for any scheduling order. Conversely, an order denying the motion to remand would in all likelihood be based on a ruling that the Attorney General's Office properly represents the Defendants. In that event, the stipulation and order for the entry of declaratory and injunctive relief filed with the court October 27, 2004 by counsel for Plaintiffs and the Attorney General's Office would in all likelihood result in the entry of a declaratory judgment in Plaintiffs' favor, leaving only the remedy issue for the court to resolve. Under these circumstances, the parties suggest that it would not be a prudent use of the court or the litigant's time to agree to discovery,

motion, hearing and trial dates until after the court has ruled on the pending motions. If the court disagrees with the parties on this, the parties can have a scheduling order on file as expeditiously as the court wished to order.

4. The Pending Motions.

The parties disagree on the logical order in which the court should properly proceed to rule on the pending motions. Plaintiffs believe that the court can properly proceed to rule on all of the motions simultaneously, and in any event believe that the court itself is in the best position to make this determination. Defendants' privately-retained attorneys believe the court should rule on the pending motions and other motions they intend to file in the following order, for the following reasons:

- a.
- b.
- c.
- d.
- e.

In response to Defendants' privately-retained attorneys' contention that the pending motions for summary judgment must await class certification and adequacy of representation rulings, Plaintiffs note that the Aguon-Schulte lawsuit is not a class action, and that there is no reason that a ruling on her motion for summary judgment must await any such determinations. Plaintiffs also note that if the court intends to grant the motions for summary judgment, then there would seem to be no reason to delay any such rulings until after the adequacy of representation issue in the Merrill class action is resolved.

4. The names of counsel in this case are:

Thomas L. Roberts, Esq.
Dooley Roberts & Fowler LLP

Cesar C. Cabot, Esq.
Law Offices of Cesar Cabot;

Shannon Taitano, Esq.
Office of the Governor


Calvo & Clark LLP, by Daniel Benjamin, Esq.

Office of the Attorney General, by Robert Weinberg, Esq.

DATED this ____ day of _____, 2004.

HONORABLE
Judge, District Court of Guam

DOOLEY ROBERTS & FOWLER LLP

By: 

THOMAS L. ROBERTS
Attorneys for Plaintiffs

LAW OFFICES OF CESAR CABOT

By: _____
CESAR C. CABOT
Attorneys for Defendants GEC and
Gerald A. Taitano*

OFFICE OF THE GOVERNOR

By: _____
SHANNON TAITANTO
Attorneys for Defendant Governor
Felix P. Camacho*

CALVO & CLARK PC

By: _____
DANIEL BENJAMIN
Attorneys for Defendant Governor
Felix P. Camacho*

OFFICE OF THE ATTORNEY GENERAL

By: _____
ROBERT WEINBERG
Attorneys for Defendants*

* Representation issue pending judicial determination.